

**IN RE:**

**STEPHANIE S. CARBAUGH  
A/K/A STEPHANIE SUE CARBAUGH  
A/K/A STEPHANIE S. TAYLOR  
Debtor**

**GMAC MORTGAGE, LLC****Movant**

**V.**

**STEPHANIE S. CARBAUGH  
A/K/A STEPHANIE SUE CARBAUGH  
A/K/A STEPHANIE S. TAYLOR**

**and**

**GEORGE H. CARBAUGH, III (Non-Filing Co-Mortgagor)**  
**Respondents**

**Bk. No. 1:09-04713 MDF**

**Chapter No. 13**

**11 U.S.C. §362**

**MOTION OF GMAC MORTGAGE, LLC FOR RELIEF FROM AUTOMATIC STAY  
UNDER §362 PURSUANT TO BANKRUPTCY PROCEDURE RULE 4001**

Movant, by its attorneys, PHELAN HALLINAN & SCHMIEG, LLP, hereby requests a termination of the Automatic Stay and leave to foreclose on its mortgage on real property owned by Debtor STEPHANIE S. CARBAUGH A/K/A STEPHANIE SUE CARBAUGH A/K/A STEPHANIE TAYLOR and Non-Filing Co-Mortgagor GEORGE H. CARBAUGH, III.

1. Movant is **GMAC MORTGAGE, LLC**.
2. Debtor STEPHANIE S. CARBAUGH A/K/A STEPHANIE SUE CARBAUGH A/K/A STEPHANIE S. TAYLOR AND and Non –Filing Co-Mortgagor GEORGE H. CARBAUGH, III are the owners of the premises located at **112 NORTH BROAD STREET, WAYNESBORO, PA 17268**, hereinafter known as the mortgaged premises.
3. Movant is the holder of a mortgage on the mortgaged premises. Movant's attorney is unaware of the mortgage lien position without further investigation.
4. Debtor's failure to tender monthly payments in a manner consistent with the terms of the Mortgage and Note results in a lack of adequate protection.
5. Movant wishes to institute foreclosure proceedings on the Mortgage due to Debtor's failure to make payments required thereunder.

6. As of the date of the filing of this motion, Debtor has failed to tender post-petition mortgage payments for the months of November 2009 through February 2010. The monthly payment for the month of November 2009 is \$858.65, payments for the months of December 2009 through February 2010 are \$852.16 each, with an accrued late charge in the amount of \$137.10, less suspense in the amount of \$7.50, for a total amount due of \$3,544.73. The next payment is due on or before March 1, 2010 in the amount of \$852.16. Under the terms of the Note and Mortgage, Debtor has a continuing obligation to remain current post-petition and failure to do so results in a lack of adequate protection to Movant.

7. Movant additionally seeks relief from the Co-Debtor Stay under 1301(c) (if applicable) in the instant case, as the continuation of the Co-Debtor Stay causes irreparable harm to the Movant. Movant may be barred from moving forward with its state court rights under the terms of the mortgage without relief from the Co-Debtor Stay.

8. Movant has cause to have the Automatic Stay terminated as to permit Movant to foreclose on its mortgage.

9. Rule 4001 (a)(3) should not be applicable and **GMAC MORTGAGE, LLC**, should be allowed to immediately enforce and implement the Order granting Relief from the Automatic Stay.

**WHEREFORE**, Movant respectfully requests that this Court enter an Order;

a. modifying the Automatic Stay under §362 with respect to the mortgaged premises as to permit Movant to foreclose on its mortgage and allow Movant or any other purchaser at Sheriff's Sale to take any legal or consensual action for enforcement of its right to possession of, or title to, said premises and for legal fees and costs incurred with regard to this Motion; and

b. that Rule 4001(a)(3) is not applicable and **GMAC MORTGAGE, LLC**, may immediately enforce and implement the Order granting Relief from the Automatic Stay; and

c. granting any other relief that this Court deems equitable and just.

/s/ JOSEPH P. SCHALK, ESQUIRE  
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